IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6089 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
RAMJI GOVIND & 4 - Respondent(s)

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Appearance :
MR VINAY PANDYA GOVERNMENT PLEADER for Petitioner(s) : 1 - 2.
MR MEHUL S SHAH for Respondent(s) : 1 - 5.
MR SURESH M SHAH for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 28/02/2007

ORAL JUDGMENT

1. The State of Gujarat through the Secretary, Road and Building Department, Sachivalaya, Gandhinagar and Executive Engineer,

R & B Division, Rajkot, the petitioners, original opponents have filed with a prayer that this Court may be pleased to quash and set aside the judgment and order dated 3.3.2006 passed in Special Darkhast Application No.37 of 2004 pending before the learned Civil Judge (S.D.), Gondal, whereby the learned Judge has directed that the State of Gujarat should pay the amount as claimed by the applicant at Rs.89,020/- in connection with the additional amount of compensation in this behalf.

2. This Court has issued notice on 14.12.2006 and thereafter, Civil Application No.2803 of 2007 was filed by the respondents with a prayer to convert the Civil Revision Application in Special Civil Application and stay the proceedings of execution proceedings of Execution Application and implementation of Special Darkhast No.37 of 2004 pending before the learned Civil Judge, Gondal. This Court has allowed the prayer to convert Civil Revision Application into Special

Civil Application by order dated 23.2.2007. It may be noted that the earlier Civil Revision Application No.241 of 2006, which has been converted into this Special Civil Application.

2. As the matter is kept yesterday and at that time, Mr. Mehul S. Shah, learned advocate for the respondents has requested to get the matter heard today and hence, the matter is heard today on 28.2.2007 as due to paucity of time, the matter could not be heard fully today on 28.2.2007. Again I have heard Mr. Vinay Pandya, learned A.G.P. for the State and Mr. Mehul S. Shah, learned advocate on behalf of the respondents.

3. With the consent of the parties, Rule is issued. Mr. Mehul Shah, learned advocate waives service of RULE on behalf of the respondents. Therefore, the matter is taken up for final disposal.

4. The facts giving rise to this petition,

are as under :

4.1 The State of Gujarat were acquired the land for the purpose of Jetpur Amrnagar Road, issued Notification under Section 4 and 6 and after following the procedure under Land Acquisition Act passed an award dated 7.2.1984 in Land Acquisition Case No.31 of 1982 and awarded an amount of Rs.15/- per Sq. mtrs. in respect of land bearing Survey No.10/2. Being aggrieved and dissatisfied with the said order of the Land Acquisition Officer, the claimants preferred a Land Acquisition Reference before the learned Civil Judge, Gondal, claiming Rs.100/- per Sq. Mts. for their land. The learned Extra Assistant Judge of Gondal vide order dated 20.4.1996 fixed the market value of land @ Rs.45/- per Sq. mtrs. Thus, enhanced the amount from Rs.15 to Rs.45/- per Sq. mtrs.

4.2 Being aggrieved and dissatisfied with the order, the applicants preferred First Appeal

No.2766 of 1996 before this Court and it has been admitted and stay has been granted by this Court against the execution of the award passed learned Reference Court on condition to deposit the entire decreetal amount of the award before Reference Court with costs and interest within 10 weeks from the date of order.

4.3 In view of the aforesaid order, the respondent, Govt. Department deposited the amount as per the order to the tune of Rs.4,27,167/- somewhere on 10.3.2004 and 16.4.2004.

4.4 It is the case of the appellants that the amount is awarded at Rs.1,40,575/- in which the opponent added Rs.12,652/- as an interest from 10.05.1984 to 09.05.1985 at the rate of 9% and further added an interest from 10.05.1985 to 08.02.2004 at the rate of 15% in this amount, the total amount payable as shown as Rs.5,53,181/- and deducted the amount paid by the respondent - department as Rs.4,27,167/-.

4.5 Thereafter, the respondents filed Execution Application for the amount payable as per Section 23 (1) and 23 (A-1) and 23(2), which are additional compensation @ 12% prise rise with 30% solatium.

4.6 Somewhere in July, 1999, the respondents have filed Regular Execution Application No.89 of 1999. The calculations of the total outstanding of interest from 19.7.1979 in application Exhibit 1 whereas the same has been calculated from 10.5.1984 in Exhibit 24 (A) application. Secondly the cost is Rs.6586/-, whereas Rs.4587/- in Exhibit 24(A) application. Thus, there is variations in own calculations shown by the respondent himself.

4.7 The appellant has relied upon the copy of the statement by which the amount payable at Rs.1,75,086/- and considering this amount as a base, the appellant deposited the amount in

Reference Court in two installments of amount, which is payable.

8. The learned advocate for respondent Nos. 1 to 5 has invited my attention to the statement at page 40 prepared by the State Government. The said statement shows (a) Land Reference Case (b) High Court Case No. (c) Name of claimant (d) Survey No. (e) Area of the land (f) Award Passed by the Land Acquisition Officer (g) Total amount awarded; (h) Additional amount awarded by the District Court (i) Court award (including 30% solatium which falls under column No. 14 of the statement). Column No. 13 of the statement shows total amount awarded and column No. 14 provides 30% solatium. Column 15 of the said statement is (column No. 13 + 14) total amount. Column No. 16 provides further additional amount as per clause 23/1 i.e. additional amount. Column No. 17 provides total amount of (column Nos. 15+16+17); column No. 18 provides amount totally awarded (as per column No. 17 minus column No. 11) (i.e.

the earlier amount awarded as per the award and column No. 19 provides the amount of column 18 minus column 14 - solatium amount). Now as per the Government contention the amount of interest has been calculated as per column i.e. total amount minus solatium amount. The learned advocate for the claimant stated that as per the judgment of the Hon'ble Supreme Court, the interest will have to be calculated on the total amount plus solatium and when the Government has deducted solatium and given interest the same is contrary to and inconsistent with the judgment of the Hon'ble Supreme Court. The learned advocate for the claimant has invited my attention to the interest awarded in column No. 20 i.e. 10.5.1984 to 9.5.1985 and 9.5.1985 to 8.2.2004 and therefore column No. 22 is the total of column Nos. 20 and 21 and column No. 23 provides the amount payable by the claimant. This statement clearly shows that the Government has decided to pay interest on the total amount minus solatium.

9. It is the case of Mr. Mehul Sureshbhai

Shah, learned advocate that some figures have been shown on page 46, where the amount of interest payable at Rs.31,9008/-. It is his case that while awarding interest for the purpose of calculation, item No.14 i..e 30% solatium i.e. half figure Rs.31,9008/- at omission. Item No.20, some items have been reflected from page 26. He has also referred to the award of the of the learned trial Judge on page 81, particularly operative order on page 87, which is as under :

> “All the present applicants are also entitled for an additional amount u/s. 23 (1) (a) and 23(2) of the Land Acquisition Act with interest at the rate of 9% p.a. From the date of taking over possession till one year and thereafter, at the rate of 15% p.a. till its relization.
>
> The opponents are hereby directed to deposit the amount of award after deduction of 1/3rd amount within a period of 3 months from the date of this order, but the opponents are entitled to deduct the amount which is already paid to the applicants by way of compensation etc.

> The opponents shall pay the proportionate costs for the additional amount of compensation awarded to the claimants and the claimants shall bear the proportionate cost for the amount of claim, which has been disallowed.
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> Award be drawn accordingly.
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> Signed and pronounced in the open court on this 20th day of April, 1996."

10. Mr. Mehul Sureshbhai Shah, learned advocate has relied upon Section 23 of the Land Acquisition Act, 1894, which provides the matters to be considered in determining compensation. Particularly, Section [1(A) and (2), which read as under :

> Section : 23 [1(A) and (2) :
>
> In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from

> the date of the publication of the notification under Section 4, sub-section (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. (2) In addition tot he market value of the land, as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition."

10.1 The learned advocate has relied upon the judgment in the case of ***K.S. Paripoornan v. State of Kerala and Others, AIR 1995 Supreme Court 1012***, wherein the Hon'ble Supreme Court has observed particularly in para 49, 50 and 55 as under :

> "The provisions of Section 23(1-A) have to be construed in the light of the aforementioned principles. If thus construed, it would be evident that under Section 23 (1-A) an obligation to pay an additional amount by way of compensation has been imposed. Such an obligation did not exist prior to the enactment of the said provision by the amending Act. If the said provision is applied to the

acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transactions already past.

The next question which needs to be considered is whether any indication has been given by Parliament that Section (1-A) will have retrospective operation so as to to be applicable to acquisition proceedings which were commenced prior to the date of the enactment of the said provision. The learned counsel for the claimants have urged that such an indication has been given by the words “in every case” used in Section 23(1-A). We are however, of the view that Parliament has given a clear indication of its intention in this regard in Section 30(1) of the amending Act. Since express provision is contained in Section 30(1) of the amending Act indicating the intention of Parliament as to the extent to which the provision of Section 23(1-A) would apply to pending proceedings there is no scope for speculating about the

said intention of Parliament by reading Section 23(1-A) in isolation without reference to Section 30(1) of the amending Act.

Merely because sub-section (1) of Section 30 only refers to award made by the Collector while sub-section (2) of Section 30 also refers to an award made by the Court as well as the order passed by the High Court or the Supreme Court in appeal against such award does not mean that Section 23 (1-A) was intended to have application to all proceedings which were pending before the Civil Court on the date of commencement of the amending Act. The difference in the phraseology in sub-section (1) and (2) of Section 30 only indicates the limited nature of retrospectivity that has been conferred in respect of Section 23(1-A) under sub-section (1)of Section 30 does not lend support the contention that the scope of such retrospectivity should be enlarged by reading such further retrospectivity into the provisions of Section 23(1-A).”

11. Learned advocate for the respondents-claimants have relied upon the Constitution Bench Judgment of the Hon'ble Supreme Court in the case

of Sunder Vs. Union of India reported in 2001 (3) GLH 446. In para 23 on page 545 of the said judgment, the Hon'ble Supreme Court has observed like this :

> “.... We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression “awarded amount” would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof”.

11.1 Thereafter the Hon'ble Supreme Court in para 24 (Page No.454) and 27 (Page No.455) has observed like this :

> “24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that “if such compensation” is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per

annum from the date of expiry of the said period of one year" on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the Legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into difference components for the purpose of payment of interest under Section 34 was not in the contemplation of the Legislature when that Section was framed or enacted."

"27. In our view that aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the

person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

12. I have considered the facts and circumstances of the case. I have also considered the submissions made by Mr. Vinay Pandya, learned A.G.P. of the Government and also contention of Mr. Mehul Suresh Shah, learned advocate for the respondents-claimants and the operative order of the award passed by the Land Acquisition Officer and also provisions of Section 23 (1-A) of the Act and the judgments of Hon'ble Supreme Court in the case of K.S. Paripoornan Vs. State of Kerala and others (Supra) and also Constitution Bench judgment in Sunder's case (Supra) which I have referred in this behalf. In view of the facts of the case the following conclusion emerges.

13. It is the case of the learned A.G.P. Mr. Vinay Pandya for petitioner that when the Government desired to deduct the amount of interest on solatium. He has relied upon the

decision in the case of Shetty's Constructions Co. Pvt. Ltd. V. Konkan Railway Construction and another, 1998(2) Arb. LR 314.

14. Mr. Vinay Pandya, learned A.G.P. states that they have already paid entire amount, however, it is found by the Executing Court that if the Government has already paid, then the Government will not pay any further amount.

15. In view of the above, it is made clear by example that the compensation amount of Rs.100/- + solatium is Rs.40/-, which comes to Rs.140/- approximately. As per the claimants' contentions, the Government has to pay interest on total amount of Rs.140/- and as per the Executing Court's observation, the Government has calculated interest on Rs.100/- only. In view of same, the Government is directed to pay the interest on total amount of compensation. Hence, the application stands disposed of.

16. In view of the aforesaid discussion particularly discussion in para 8 in connection with the statement on page 40 of the petition which I have referred to , which clearly shows that the Government has calculated interest on the total amount of compensation minus solatium. I have referred to the facts and circumstances of the case and I have referred to Section 23(1A) and 23(2) of the Land Acquisition Act. I have also referred to the judgment of the Hon'ble Supreme Court in the case of K.S. PARIPOORNAN VS. STATE OF KEARALA & OTHERS (supra) as well as SUNDER VS. UNION OF INDIA (supra), a constitution Bench judgment of the Hon'ble Supreme Court. The judgment of the Hon'ble Apex Court specifically provides that the Government has to pay interest on the entire amount i.e. the amount awarded plus amount of solatium. Admittedly, the Government has calculated interest only on the total amount minus solatium.

17. In view of the same, if the following

order is passed, the same will be in the interest of justice.

> The Government is directed to calculate interest on the total amount of compensation which includes solatium amount (total amount + solatium) and pay the entire amount to the claimant.

18. In view of the same, the judgement and order dated 3.3.2006 passed in Special Darkhast Application No. 37 of 2004 pending before the learned Civil Judge (S.D.) Gondal is hereby confirmed and the writ petition is rejected. Rule is discharged.

(K.M. MEHTA, J.)

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